PUBLIC OFFICERS—RECOVERY OF FEES FROM DE FACTO OFFICER—SET-OFF—Action is brought by *de jure* officer against *de facto* officer for the fees of the office received by the latter. *Held,* that the *de facto* officer may set off the necessary expenses incident to the administration of the office. *Sandoval* v. *Albright* (1910), 30 Sup. Ct. 318.

The justice of this rule cannot be controverted. The cases on the point are rare and the authorities are in complete accord. *Mayfield* v. *Moore,* 53 Ill. 428, 5 Am. Rep. 52, *Bier* v. *Gorrell,* 30 W. Va., 96, 8 Am. St. Rep., 17; see *People* v. *Miller,* 24 Mich. 458. There is dictum to the effect that "had he entered without pretense of legal right then a different rule would no doubt have been applied." *Mayfield* v. *Moore,* supra. Undoubtedly the rule in the principal case and the limitation based upon the ground that a person cannot take an advantage of his own wrong are probably sound. See *Stuhr* v. *Curran,* 44 N. J. L. 181, 43 Am. Rep. 353.

WILLS—ATTESTATION—ORDER OF SIGNING.—Two witnesses to a will and the testator were present when the testator declared the instrument to be his will. One witness signed, followed by the signing of the testator and the other witness to the will. The signing, attesting and witnessing of the will was one continuous transaction. § 9266 C. L. of Mich. (1897) provides that "no will made within this state except such nuncupative wills as are mentioned in the following section, shall be effectual to pass any estate, whether real or personal, nor to charge or in any way affect the same unless it be in writing and signed by the testator or by some person in his presence and by his express direction and attested and subscribed in the presence of the testator by two or more competent witnesses." *Held,* that the will was properly executed within the provisions of this section. *Horn's Estate* v. *Bartow* (1910,) — Mich. —, 125 N. W. 696.

This case presents a much disputed point in the law of wills. The decision in the principal case is probably supported by the weight of authority in this country, among states having substantially similar statutes. *Swift* v. *Wiley,* 1 B. Mon. (Ky.) 114; *Rosser* v. *Franklin,* 6 Grat. (Va.) 1, 52 Am. Dec. 97; *O'Brien* v. *Gallagher,* 25 Conn. 228; *Miller* v. *McNeill,* 35 Pa. St. 217, 78 Am. Dec. 333; *Gibson* v. *Nelson,* 181 Ill. 122; *Kaufman* v. *Caughman,* 49 S. C. 159. These authorities hold the order of signing to be immaterial. They hold that "in acts substantially contemporaneous it cannot be said that there is any substantial priority." *Kaufman* v. *Caughman,* supra. On the other hand there are many cases which hold the order of signing to be material and which reject such wills as the one in the principal case. *Duffie* v. *Corridon,* 40 Ga. 122; *Brooks* v. *Woodson,* 87 Ga. 379, 13 S. E. 712, 14 L. R. A. 160; *Lane* v. *Lane,* 125 Ga. 386, 54 S. E. 90; *Marshall* v. *Mason,* 176 Mass, 216, 57 N. E. 340, 79 Am. St. Rep. 305; *Reed* v. *Watson,* 27 Ind. 443; *Jackson* v. *Jackson,* 39 N. Y. 153; *Lacey* v. *Dobbs,* 63 N. J. Eq. 325. The New York and New Jersey statutes however are practically the same as the modern English Wills Act of 1837, the requirements of which are stricter than those of the Statute of Frauds on which the Michigan statute is based. However, even the Michigan statute requires the witnesses to subscribe the will in the

presence of the testator. It would seem that the testator's signature is an essential part of the will which they must subscribe and the better rule appears to be that the order of signing is material. American text writers are divided in their opinion as to which view is supported by the weight of authority in this country. See PAGE, WILLS, § 222; 1 REDFIELD, WILLS *226; 1 UNDERHILL, WILLS, § 195; SCHOULER, WILLS, § 328.

WITNESSES—CREDIBILITY MAY BE ATTACKED BY EVIDENCE OF GENERAL REPUTATION FOR MORALITY.—In an action brought by the plaintiff on a claim which he held against the defendant's decedent, the plaintiff took the stand in his own behalf. For the sole purpose of discrediting his testimony, the court allowed the defendant to introduce evidence of the plaintiff's general reputation for morality in the neighborhood in which he lived. The plaintiff objected that his character was not in issue. *Held*, that under § 529 of BURNS' ANN. ST. (1908), the evidence was competent for the purpose for which it was admitted. *Castle* v. *Clark* (1910), — Ind. App. —, 90 N. E. 640.

The credibility of a party to a civil action, who testifies in his own behalf, may be impeached in the same manner as that of any other witness. *Alkire Grocer Co.* v. *Tagart*, 78 Mo. App. 166. In those states in which the situation is not controlled by statute, there is a conflict among the cases as to what sort of reputation evidence is admissible to affect credibility. In many jurisdictions the testimony is limited to such as shows the witness's general reputation for truth and veracity in the community in which he lives. *Gilchrist* v. *M'Kee*, 4 Watts (Pa.) 380; *Rudsdill* v. *Slingerland*, 18 Minn. 380; *Shaw* v. *Emery*, 42 Me. 59; *Atwood* v. *Impson*, 20 N. J. Eq. 150; 3 ENCYC. OF EVID. 22 and cases there cited. WIGMORE calls this the better rule. 3 WIGMORE, EVID. 1060. In about as large a number of jurisdictions a witness may be impeached by evidence of his general moral character. *Sorrelle* v. *Craig*, 9 Ala. 534; *Turner* v. *King*, 98 Ky. 253; *Bakeman* v. *Rose*, 18 Wend. (N. Y.) 146; 3 ENCYC. OF EVID. 23 and cases there cited. An exhaustive review of the cases, involving this question, will be found in a note in 2 WIGMORE, EVID. p. 1061. The latter rule has been adopted by statute in some states; among them Indiana, the state in which the case under discussion was decided. KIRBY DIG. OF ST. OF ARK. (1904), § 3138; POMEROY'S CAL. CODE OF CIVIL PROCEDURE (1901), § 2051; Vol. II Ga. Code, § 5293; Iowa Code (1897), § 4614; BURNS' ANN. CODE (Ind. 1908), § 529; OREGON C. C. P., (1892) § 840; CARROLL'S KY C. C. P. (1900), § 597; MONT. C. C. P. (1895), §§ 3123 and 3379; UTAH COMP. ST. C. C. P. (1907), § 3412; IDAHO REV. ST. (1887), § 5956; N. MEX. COMP. L. (1897), § 3026.